

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

SAMUEL UPTON, et al.,

Plaintiffs,

v.

CIV 00-1501 KBM/DJS

CLOVIS MUNICIPAL SCHOOL DISTRICT, et al.,

Defendants.

MEMORANDUM OPINION & ORDER

Defendants removed this action from Ninth Judicial District Court for the County of Curry, New Mexico, and the parties consented to have me serve as the presiding judge and enter final judgment pursuant to 28 U.S.C. § 636(c) and FED. R. CIV. P. 73(b). Plaintiffs then filed a first amended complaint. Jurisdiction is based on federal question jurisdiction. The parties are not diverse. *See Doc. 27*. On May 23, 2001, I held a hearing on Defendants' motion to dismiss Plaintiffs' first amended complaint pursuant to FED. R. CIV. P. 12(b)(6). *Doc. 35*.¹ For the reasons stated on the record during the hearing, Plaintiffs' federal claims under the ADA, the IDEA, and § 1983 are dismissed, and I decline to exercise supplemental jurisdiction over the remaining state law claim for wrongful death pursuant to 28 U.S.C. § 1367(c).

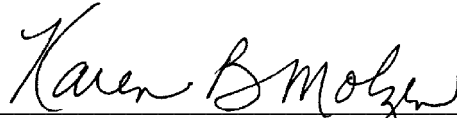
Wherefore,

IT IS HEREBY ORDERED THAT Counts II and III of Plaintiffs' first amended

¹ Although not designated as such on the docket sheet, this motion was filed on behalf of all Defendants by their counsel. Two other motions were erroneously filed electronically by Defendants and, as such, are not pending before the Court. *See Docs. 33, 34*.

complaint (*Doc. 27*) are dismissed with prejudice and Count I is remanded to the Ninth Judicial District Court for the County of Curry, New Mexico. A final order will be entered.

IT IS FURTHER ORDERED THAT the telephonic pretrial conference set for October 10, 2001 and the nonjury trial set for November 5, 2001 in Albuquerque are vacated.

A handwritten signature in black ink, appearing to read "Karen B. Moynihan", is written over a horizontal line.

UNITED STATES MAGISTRATE JUDGE
Presiding By Consent